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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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In re:)
)
Amendment of the Commission's Rules)
To Establish Eligibility Requirements)
For the 2 GHz Mobile-Satellite Service)
_____)

AUG 27 1998

RM 9328

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

COMMENTS

Pursuant to Section 1.405 of the Commission's Rules and Public Notice, Report No. 2287 (released July 28, 1998), Globalstar, L.P., by its undersigned attorneys, hereby comments on the "Petition for Rulemaking" filed by ICO Services Limited ("ICO"). ICO has proposed rules to establish eligibility and service requirements for the 2 GHz Mobile-Satellite Service ("MSS").

Like ICO, Globalstar is an applicant for authority to construct, launch and operate an MSS system in the bands allocated for MSS at 2 GHz. Globalstar agrees with ICO that the Commission should move forward expeditiously to adopt licensing, service and technical rules for 2 GHz MSS. In this regard, Globalstar supports ICO's proposals for a regulatory framework for 2 GHz MSS generally similar to that adopted for MSS Above 1 GHz.¹ See Petition, at 6-8.

¹ See Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Mobile Satellite Service in the 1610-1626.5/2483.5-2500 MHz Frequency Bands, 9 FCC Rcd 5936 (1994) ("Big LEO Rules Order").

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However, ICO's Petition focuses on two recommended rules which would not serve the public interest, and should be rejected. First, ICO suggests that the Commission should adopt a policy of licensing (at least initially) only "new entrants" in the 2 GHz MSS bands. Second, ICO recommends adoption of a two-tiered approach to licensing 2 GHz MSS systems in which qualified new entrants would be licensed on an expedited basis, and, at some unspecified later date, other qualified applicants could receive licenses. ICO has failed to demonstrate that either of these recommendations, if adopted, would serve the public interest, and, therefore, the Commission should reject both.

I. ICO'S "NEW ENTRANT" ELIGIBILITY REQUIREMENT MUST BE REJECTED.

ICO suggests that the Commission should adopt an eligibility requirement for 2 GHz MSS to give priority in licensing for "new entrants" into the MSS market. See Petition, at 4-6. ICO claims that granting 2 GHz MSS licenses to entities which hold licenses for other MSS spectrum does not "increase competition" and therefore does not serve the public interest. Petition, at 5-6. ICO's proposed "new entrant" eligibility requirement is not rationally related to its alleged purpose and is inconsistent with the Commission's existing policies on licensing space stations. Accordingly, the Commission should not adopt ICO's proposal.

First, the Commission has already determined that the spectrum at 2 GHz is available as expansion spectrum for authorized Big LEO systems. After adopting the 2 GHz allocation, the Commission waived the financial qualification rule for

MSS Above 1 GHz for Mobile Communications Holdings, Inc. and Constellation Communications, Inc.² In allowing MCHI and Constellation access to the 1.6/2.4 GHz spectrum, the Commission recognized that it had effectively restricted the spectrum resources available to financially qualified applicants (Globalstar, Odyssey and Iridium at the time), but justified that result by noting that spectrum for expansion for MSS Above 1 GHz licensees was available at 2 GHz.³ Therefore, the Commission has already rejected the premise of ICO's proposal, and, unless the Commission rescinds the MSS licenses granted to MCHI and Constellation, it will have contradicted an earlier conclusion upon which MSS licensees have relied.

Second, in adopting rules to establish a competitive marketplace for radio services, the Commission has historically considered how much spectrum would be available to the various applicants in order to ensure at least rough parity among competitors. For example, the Commission adopted a spectrum aggregation cap for Commercial Mobile Radio Service licensees to promote parity in the ability to compete.⁴ Similarly, in deciding how much spectrum to allocate for new Personal Communications Services ("PCS"), the Commission stated that "it [is] important

² See Mobile Communications Holdings, Inc., 12 FCC Rcd 9663, 9674-76 (Int'l Bur. 1997); Constellation Communications, Inc., 12 FCC Rcd 9651, 9659 (Int'l Bur. 1997). The licensees of the Globalstar and Iridium systems have requested the Commission to review this waiver.

³ See MCHI, 12 FCC Rcd at 9673; Constellation, 12 FCC Rcd at 9656.

⁴ See Regulatory Treatment of Mobile Services, 9 FCC Rcd 7988, ¶¶ 248-251 (1994) (establishing spectrum aggregation cap for CMRS licensees in a market).

that each PCS licensee be provided enough spectrum to be competitive with existing telecommunications services such as cellular, SMRs and others."⁵

Here, ICO complains that four of the pending 2 GHz applicants are authorized to use the 1610-1626.5/2483.5-2500 MHz bands, that is, 33 MHz shared among four licensees.⁶ However, under ICO's proposal, ICO alone could receive exclusive access to 70 MHz of MSS spectrum for no reason other than that it is a "new entrant." See Petition, at 9. Based on the Commission's established spectrum management policies, a rule which could result in such disparity in the availability of spectrum for MSS competitors cannot be viewed as establishing market parity sufficient to justify barring existing licensees from obtaining additional spectrum at the same time as "new entrants."

Third, ICO's recommendation relies solely upon the premise that granting a license to an entity which does not currently have access to spectrum automatically promotes competition. This premise is simply not correct. History illustrates that the Commission cannot rely on sheer numbers of licensees to ensure that it promotes competition because holding a license alone is not always sufficient to provide service.⁷

⁵ Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 5676, 5691 (1992).

⁶ See Big LEO Rules Order, 9 FCC Rcd at 5954-56.

⁷ For example, after the auction for C-block PCS licenses, the issuance of licenses to even more wireless radio service competitors contributed to the inability of C-block licenses to access financing to develop service. See Letter from James H. Barker to Mr. William F. Caton, "Wireless Telecommunications Bureau Seeks
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Moreover, the mere fact that an entity does not currently hold a space station license has no rational relation to its ability to put a satellite system into operation and provide competition. This principle was demonstrated in the Radio-Determination Satellite Service ("RDSS").⁸ The Commission licensed "new entrants" in the RDSS, and none of the systems became operational.⁹ Accordingly, if the goal of an eligibility requirement is to promote competition, then the Commission must establish a requirement that will rationally identify entities that will likely operate a system and compete.

Fourth, ICO's new entrant proposal is incomplete. ICO's proposed rule is modeled on the Commission's second-round "Little LEO" proposal to grant licenses only to Non-Voice, Non-Geostationary ("NVNG") systems which were not licensed in the first NVNG processing round¹⁰ – a proposal which was ultimately abandoned by

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Comment on Broadband PCS C and F Block Installment Payment Issues," Public Notice (Appendix C), 12 FCC Rcd 24230, 24246 (1997).

⁸ See Amendment to the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to, a Radio-Determination Satellite Service, 104 FCC 2d 650 (1986) ("RDSS Rules Order").

⁹ See Geostar Positioning Corp., 6 FCC Rcd 2276 (CCB 1991); Amendment of Section 2.106 of the Commission's Rules to Allocate the 1610-1626.5 MHz and 2483.5-2500 MHz Bands for Use by the Mobile Satellite Service, 9 FCC Rcd 536, 536 n.2 (1994).

¹⁰ See Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service, 11 FCC Rcd 19841 (1996) ("Little LEO NPRM").

the Commission.¹¹ But, the NVNG proposal was premised on the outcome of a market analysis to determine whether such a rule would be in the public interest.¹² ICO has presented no market data to suggest that restricting the 2 GHz band to new entrants would produce a competitive marketplace for MSS. Therefore, there is no demonstrated basis on which to evaluate the public interest benefits of the proposal.

II. ICO'S TWO-TIERED LICENSING APPROACH MUST BE REJECTED.

ICO also proposes a two-tiered approach to consideration of the pending applications in the 2 GHz processing group. Petition, at 6. Applications of "new entrants," like ICO, would be given priority and granted in the near term while applications of other entities would be deferred to a later stage of processing. ICO's suggestion contradicts existing law and policies and must be rejected.

Within a processing round, the Commission is obligated to treat equally each applicant that responds to the cut-off date in a timely manner.¹³ That is, all

¹¹ See Amendment of Part 25 of the Commission's Rules to Establish Rules and Policies Pertaining to the Second Processing Round of the Non-Voice, Non-Geostationary Mobile Satellite Service, 10 CR 1, 5 (1997).

¹² See Little LEO NPRM, 11 FCC Rcd at 19848-53.

¹³ See, e.g., McElroy Electronics Corp. v. FCC, 990 F.2d 1351, 1365-66 (D.C. Cir. 1993) (FCC is obligated to provide equal treatment for similarly situated applicants, or justify other action); Public Media Center v. FCC, 587 F.2d 1322, 1331 (D.C. Cir. 1978) (same); Melody Music, Inc. v. FCC, 345 F.2d 730, 733 (D.C. Cir. 1965) (same); see also Aeronautical Radio, Inc. v. FCC, 928 F.2d 428, 453 (D.C. Cir. 1991) (FCC may not depart from comparative hearing process for mutually exclusive

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applicants which can demonstrate that they meet the applicable eligibility and technical requirements of the service must have the opportunity to receive a license at the same time.¹⁴

If there are more applicants than licenses, then the Commission must determine how to resolve mutual exclusivity. If some applicants do not meet the relevant eligibility requirements, then, the Commission may opt to consider them at a later date.¹⁵ ICO has not demonstrated that it is in the public interest to establish two-tiered consideration. Indeed, the apparent goal of ICO's proposal is to give one private company, ICO, a substantial benefit at the expense of other applicants. There are no public interest reasons supporting such action.

In the past several years, the Commission has consistently used the existing processing procedures with success. The Commission has established processing rounds for all space station applicants with the purpose of deciding among potentially competing applicants, if necessary, and determining how spectrum should be shared by multiple systems.¹⁶ Any advantage that one licensee may

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applications unless justified by "truly compelling factors that are special to the present licensing proceeding").

¹⁴ See Big LEO Rules Order, 9 FCC Rcd at 5952-53.

¹⁵ See id. at 5948-54.

¹⁶ See id. at 5954-57; Amendment of the Commission's Rules to Establish Rules and Policies Pertaining to a Non-Voice, Non-Geostationary Mobile Satellite Service, 8 FCC Rcd 6330, 6331 (1993); RDSS Rules Order, 104 FCC 2d at 653-54.

eventually obtain would be based solely on its own expeditious development of its system, rather than favoritism in the regulatory process.

Maintaining the integrity of an established processing round is particularly important where, as at 2 GHz, there are issues to be resolved on how to share limited spectrum. The ability of systems to share spectrum depends upon many factors, including system design, number of licensees, availability of spectrum and technical parameters.¹⁷ These decisions on sharing require evaluation of the applicant systems and thus historically have been reached in the context of a processing round. Giving one or two applicants within a processing round preferential access to spectrum would give them an unfair advantage in resolving sharing issues. Indeed, granting some subset of applicants preferred access to use the 2 GHz spectrum could also make it impossible for deferred applicants to use any spectrum at 2 GHz. As non-licensees, the deferred applicants may either de jure or de facto not be considered in developing the band plan. Grant of a deferred application would then be an empty gesture, and a denial of an applicant's rights to comparative consideration with mutually-exclusive applicants.¹⁸

Finally, it is not at all evident why ICO's two-tiered approach is even needed. The Commission has not yet determined how many systems can be accommodated

¹⁷ See Amendment of the Commission's Regulatory Policies to Allow Non-U.S. Licensed Space Stations to Provide Domestic and International Satellite Service in the United States, 12 FCC Rcd 24094, 24161-62 (1997); RDSS Rules Order, 104 FCC 2d at 653-54.

¹⁸ See Ashbacker Radio Corp. v. FCC, 326 U.S. 327 (1945).

in the 2 GHz MSS spectrum. Under ICO's premise that more competitors serves the public interest, then the public interest would be promoted rather than harmed by licensing multiple systems quickly. Moreover, reserving the band for one or two systems provides no incentive for those licensees to build quickly, while licensing several motivates all to develop service expeditiously. Processing all applicants at the same time promotes efficient use of the spectrum and expeditious delivery of service. Therefore, the Commission should not change its current processing policies.

III. CONCLUSION

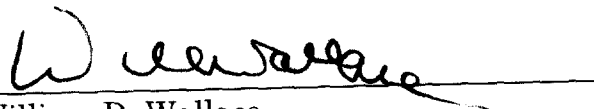
For the reasons set forth above, Globalstar urges the Commission to reject ICO's proposals for a "new entrant" eligibility rule and two-tiered processing of 2 GHz applicants. The Commission should, however, proceed to issue a "Notice of Proposed Rulemaking" for licensing, technical and service rules for 2 GHz MSS so that the process of licensing 2 GHz MSS can move forward on an expeditious basis.

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CERTIFICATE OF SERVICE

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